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Jack Zeigler
Policy and Rules Manager
Department of Enterprise Services
1500 Jefferson
Olympia, WA 98501

Dear Mr. Zeigler:

The Independent Business Association (IBA) strongly opposes **WSR 14-16-122** and **WAC 200-380 010-030** proposed by the Department of Enterprise Services (DES). The IBA totally opposes DES adopting a rule to authorize the DES to adopt guidelines to implement state legislation, agency policies, and procedures in lieu of adopting rules in accordance with the state's Administrative Procedures Act (APA). The Administrative Procedures Act was established to insure complete public notice of new or amended agency policy or procedures, ensure a public comment period, ensure compliance with the state Regulatory Fairness Act, ensure a responsiveness summary by an agency with respect to proposed rules and comments from the public, and to ensure the authority of the courts and the Legislature to review the policies and procedures adopted by an agency. The proposed DES rule circumvents all of these citizen, stakeholder, and public protection contained in the APA as it is now in law.

We oppose **WSR 14-16-122** as it sets a new precedent in Washington State that circumvents the intent of the Governor, the Legislature, and the Administrative Procedures Act.

In 1995 the Legislature and the Governor, in readopting the APA, adopted the following, "1) The legislature finds that:

(1)(a) One of its fundamental responsibilities, to the benefit of all the citizens of the state, is the protection of public health and safety, including health and safety in the workplace, and the preservation of the extraordinary natural environment with which Washington is endowed;

(b) Essential to this mission is the delegation of authority to state agencies to implement the policies established by the legislature; and that the adoption of administrative rules by these agencies helps assure that these policies are clearly understood, fairly applied, and uniformly enforced;

(c) Despite its importance, Washington's regulatory system must not impose excessive, unreasonable, or unnecessary obligations; to do so serves only to discredit government, makes enforcement of essential regulations more difficult, and detrimentally affects the economy of the state and the well-being of our citizens.

(2) The legislature therefore enacts chapter . . ., Laws of 1995 (this act), to be known as the regulatory reform act of 1995, to ensure that the citizens and environment of this state receive the highest level of protection, in an effective and efficient manner, without stifling legitimate activities and responsible economic growth. To that end, it is the intent of the legislature, in the adoption of this act, that:

(a) Unless otherwise authorized, substantial policy decisions affecting the public be made by those directly accountable to the public, namely the legislature, and that state agencies not use their administrative authority to create or amend regulatory programs;

(b) When an agency is authorized to adopt rules imposing obligations on the public, that it do so responsibly: The rules it adopts should be justified and reasonable, with the agency having determined, based on common sense criteria established by

the legislature, that the obligations imposed are truly in the public interest;

(c) Governments at all levels better coordinate their regulatory efforts to avoid confusing and frustrating the public with overlapping or contradictory requirements;

(d) The public respect the process whereby administrative rules are adopted, whether or not they agree with the result: Members of the public affected by administrative rules must have the opportunity for a meaningful role in their development; the bases for agency action must be legitimate and clearly articulated;

(e) Members of the public have adequate opportunity to challenge administrative rules with which they have legitimate concerns through meaningful review of the rule by the executive, the legislature, and the judiciary. While it is the intent of the legislature that upon judicial review of a rule, a court should not substitute its judgment for that of an administrative agency, the court should determine whether the agency decision making was rigorous and deliberative;

whether the agency reached its result through a process of reason; and whether the agency took a hard look at the rule before its adoption;

(f) In order to achieve greater compliance with administrative rules at less cost, that a cooperative partnership exist between agencies and regulated parties that emphasizes education and assistance before the imposition of penalties; and
(g) Workplace safety and health in this state not be diminished, whether provided by constitution, by statute, or by rule.

WSR 14-16-122 fails to comply with items 1(b), 1(c), 2(a). 2(b), 2(d), and 2(e) of the clearly stated intent by the Legislature and the Governor of the intent of the state's Administrative Procedures Act.

The state's Administrative Procedures Act defines a rule as*: "Rule" means any agency order, directive, or regulation of general applicability (a) the violation of which subjects a person to a penalty or administrative sanction; (b) which establishes, alters, or revokes any procedure, practice, or requirement relating to agency hearings; (c) which establishes, alters, or revokes any qualification or requirement relating to the enjoyment of benefits or privileges conferred by law; (d) which establishes, alters, or revokes any qualifications or standards for the issuance, suspension, or revocation of licenses to pursue any commercial activity, trade, or profession; or (e) which establishes, alters, or revokes any mandatory standards for any product or material which must be met before distribution or sale. The term includes the amendment or repeal of a prior rule, but does not include (i) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public, (ii) declaratory rulings issued pursuant to RCW 34.05.240, (iii) traffic restrictions for motor vehicles, bicyclists, and pedestrians established by the secretary of transportation or his or her designee where notice of such restrictions is given by official traffic control devices, (iv) rules of institutions of higher education involving standards of admission, academic advancement, academic credit, graduation and the granting of degrees, employment relationships, or fiscal processes, or (v) the determination and publication of updated nexus thresholds by the department of revenue in accordance with RCW 82.04.067.*

The guidelines the Department of Enterprise Services is proposing for print management are likely to establish, alter, or revoke any qualification or requirement relating to the enjoyment of benefits or privileges conferred by law and are thus illegal rules and are a violation of the state's Administrative Procedures Act.

Respectfully submitted,

Gary Smith
Executive Director